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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NIKETA WILLIAMS,

Defendant.

No. CR 08-0398 WHA
CR 08-0667 WHA

UNITED STATES' RESPONSE TO THE
DEFENDANT'S LETTER TO THE
COURT

Pursuant to the Order dated August 7, 2009, the United States provides a brief response to the Defendant's July 25, 2009 letter to the Court.

In her letter, the Defendant appears to make two basic contentions: (1) That the restitution amount should take into account amounts she paid to the victim-investors; and (2) that she should receive a "downward departure" so that she can "start to make amends by getting a decent job" to pay back the restitution.

Neither of these contentions has merit. First, the total restitution amount in the plea agreement incorporated any lulling payments that Ms. Williams made to her victims. In other words, if the victim gave Ms. Williams \$100,000, and she provided the victim \$10,000 as an

1 alleged “return” on the “investment,” the restitution amount for that victim was \$90,000. Ms.
2 Williams and her counsel agreed to these calculations in the plea agreement, and she should not
3 be heard to complain now.

4 Second, Ms. Williams defrauded victims all over the United States – including friends
5 and family members – to the tune of nearly \$1.7 million dollars. Her guideline range was 41-51
6 months. The Court’s sentence of 46 months was consistent with both the plea agreement and the
7 undisputed facts in this case. While it is admirable that Ms. Williams has now recognized the
8 error of her ways and plans to make good on her debts, the reality is that she is *required* to pay
9 restitution to her victims. Accordingly, the fact that she intends to comply with both the law and
10 her plea agreement is not a basis for a post-sentencing “downward departure.”

11 In addition to the above facts, the law is clear that the Court lacks jurisdiction to modify
12 the sentence here. *See* Fed. R. Cr. P. 35 (sentence may be modified within 7 days for arithmetical
13 or technical error; sentence may be modified thereafter based on substantial assistance); 18
14 U.S.C. § 3582(c) (court may modify a term of imprisonment only (1) upon a motion of Director
15 of the Bureau of Prisons if there are “extraordinary and compelling reasons warrant[ing] such a
16 reduction”; or (2) upon a motion of the defendant, the Director of the Bureau of Prisons, or the
17 court’s own motion, if the sentence was “based on a sentencing range that has subsequently been
18 lowered by the Sentencing Commission”).

19 For the foregoing reasons, the government submits that the Defendant’s sentence should
20 remain final.

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23 DATED: August 12, 2009

Respectfully submitted,

24 JOSEPH P. RUSSONIELLO
25 United States Attorney

26 /s/
27 TRACIE L. BROWN
28 Assistant United States Attorney